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SENATE BILL 417 By  
Dixon

HOUSE BILL 1499  
By Jones U (Shel)

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 50, to authorize alternative hearing procedures in teacher dismissal and discipline cases; and Tennessee Code Annotated, Section 49-2-301, relative to dismissal hearings conducted by superintendents.

WHEREAS, local boards of education and appointed superintendents have the statutory responsibility to hear certain types of teacher discipline or dismissal cases; and

WHEREAS, the hearing of such discipline or dismissal cases requires time beyond the regular duties and functions of both the local boards of education and superintendents; and

WHEREAS, the lack of guidelines for proper hearing procedures has resulted in time consuming and expensive litigation; and

WHEREAS, teachers suffering potential loss of career employment are entitled to an impartial hearing body or officer and a fair procedure designed to establish facts sufficient to justify the loss of employment; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 50, is amended by adding the following language as a new part 15:

Section 49-50-1501. This part shall be known and may be cited as the  
"Alternative Hearing Procedures Act of 1997."

Section 49-50-1502. Alternative Hearing Procedures. - (a) Teachers given notice  
of dismissal charges pursuant to Section 49-2-301(f)(33) or Sections 49-5-511(a) and

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49-5-512 may request a hearing before an arbitrator. Such a request must be written and received by the superintendent within twenty (20) days after the teacher received written notice of the charges. Failure to initiate a request for arbitration shall be considered as acquiescence to the hearing otherwise provided in law.

(b) If the teacher and superintendent are unable to mutually agree to an arbitrator, the superintendent shall request from a national arbitration service a list of nine (9) qualified arbitrators to hear the case. The teacher and the superintendent shall alternately strike names from the list until the name of one arbitrator remains. Any disagreement over who shall strike the first name shall be decided by the flip of a coin. The teacher and the local school system shall share equally the costs and fees of the arbitrator.

(c) No person shall serve as an arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, or is employed or is a member of any professional organization of which the teacher is a member.

(d) The function of the arbitrator shall be to review the evidence and testimony, to assess the credibility of witnesses, to weigh conflicting evidence, to draw reasonable inferences from the facts, to make written findings of both evidentiary and ultimate facts, and to finally determine whether the teacher shall be dismissed, disciplined or retained based on the charges.

(e) Each party shall have the right to be represented by counsel. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the arbitrator shall require

reasonable substantiation of statements or records tendered. The burden of proof shall fall to the board of education or superintendent to prove by a preponderance of the evidence that, at the time the notice of charges was served, the board of education or superintendent had cause to dismiss or discipline the teacher.

(f) The arbitrator's decision shall be final and binding on the parties. The arbitrator shall, with reasonable dispatch, render his written decision by giving a copy of his decision to both the teacher and the board of education or superintendent. As the decision of the arbitrator is final and binding, the arbitrator shall at the beginning of the hearing determine that the parties understand the nature of the proceedings, the lack of any judicial remedy under state law following arbitration, and that the teacher has knowingly and voluntarily chosen arbitration in lieu of statutory hearings before the board of education or superintendent.

SECTION 2. Tennessee Code Annotated, Section 49-2-301, is amended by deleting in its entirety subsection (f)(33) and substituting instead the following:

(f)(33) The superintendent may dismiss any employee under the superintendent's jurisdiction for incompetence, inefficiency, insubordination, improper conduct or neglect of duty; provided, that no one shall be dismissed without first having been given in writing, due notice of the charge or charges and an opportunity for defense, including the issuance of subpoenas, examination and cross-examination of witnesses, and the right to appear and present the employee's contentions and evidence in person or by counsel. Hearings held pursuant to this section may be heard by an arbitrator if requested by the employee or the superintendent determines that time restraints or possible conflicts of interest require a third party to hear the case.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.